

APPEAL NO. 040606  
FILED MAY 3, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 20, 2004. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_, and that the claimant did not have disability from the claimed injury. The claimant appealed the hearing officer's determinations based on sufficiency of the evidence grounds. The respondent (self-insured) responded, urging affirmance.

DECISION

Affirmed.

The claimant had the burden to prove that she was injured in the course and scope of her employment. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. The finder of fact may believe that the incident occurred, but disbelieve the claimant's testimony that the incident caused an injury as claimed. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). In the instant case, the hearing officer believed that an altercation incident occurred at work on \_\_\_\_\_; however, he did not believe that incident caused "damage or harm to the physical structure of the claimant's body." The hearing officer found that the "claimant's cervical and thoracic spine complaints are the result of degenerative disc disease in the claimant's cervical and thoracic spine," as evidenced by the MRI of the cervical spine dated August 10, 2001. The Appeals Panel will not disturb the challenged factual finding of a hearing officer unless it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find it so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that the claimant did not have disability. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

The self-insured asserts that the claimant states in her appeal that she called the employer after the CCH to acquire new information. The self-insured essentially contends that this statement contains new evidence that was not presented at the CCH and should not be considered for the first time on appeal. In determining whether new evidence submitted with an appeal requires remand for further consideration, the

Appeals Panel considers whether the evidence came to the knowledge of the party after the hearing, whether it is cumulative of other evidence of record, whether it was not offered at the hearing due to a lack of diligence, and whether it is so material that it would probably result in a different decision. See Texas Workers' Compensation Commission Appeal No. 93536, decided August 12, 1993. Upon our review, we cannot agree that the new information meets the requirements of newly discovered evidence, in that the claimant did not show that the new evidence submitted for the first time on appeal could not have been obtained prior to the hearing or that its inclusion in the record would probably result in a different decision. Any new information included in the appeal does not meet the standard for newly discovered evidence and will not be considered.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **a self-insured governmental entity through TEXAS COUNCIL RISK MANAGEMENT FUND** and the name and address of its registered agent for service of process is

**FF  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).**

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Veronica L. Ruberto  
Appeals Judge

CONCUR:

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Daniel R. Barry  
Appeals Judge

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Margaret L. Turner  
Appeals Judge